1 2 3 4 5 6 7 8	MARC A. KARLIN, ESQ., (Cal. Bar No.: E-mail: mkarlin@karlaw.com KARLIN & KARLIN, APLC 535 N. Brand Blvd., Suite 701 Glendale, CA 91203 Telephone: (213)365-1555 Facsimile: (213)383-1166 PRO HAC VICE PENDING Attorneys for PLAINTIFF JENNIFER AIE		
9	UNITED STATES DISTRICT COURT		
10	DISTRICT OF NEVADA		
11			
12	JENNIFER AIELLO,	Case No.:	
13	JEININI EK MEDDO,	COMPLAINT	
14	Plaintiff	COM LAIVI	
15	v.		
16	UNITED STATES OF AMERICA,		
17			
18	Defendant.		
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	COMPLAINT		
	COMILEANNI		

NOW COMES PLAINTIFF, JENNIFER AIELLO, an individual, by and through her attorneys, for her Complaint against Defendants and who states as follows:

PARTIES

- 1. Plaintiff JENNIFER AIELLO is a resident of Lake Havasu, Arizona.
- 2. Decedent THEODORE L. SWENSON was a resident of Clark County, State of Nevada, who died in Clark County, State of Nevada, on October 16, 2018.
- 3. Plaintiff JENNIFER AIELLO is the surviving child of Decedent THEODORE L. SWENSON.
- 4. Defendant, the UNTIED STATES OF AMERICA, may be served by delivering a copy of the Summons and Complaint to the United States Attorney for the District of Nevada.

JURISDICTION AND VENUE

- 5. This Honorable Court has federal question jurisdiction over this cause pursuant to 28 U.S.C. §1346(b), commonly known as the Federal Tort Claims Act, which vests exclusive subject-matter jurisdiction of the Federal Tort Claims Act in the U.S. District Court. Venue of this suit is proper herein because the events or omissions giving rise to these claims occurred in Clark County, State of Nevada, under 28 U.S.C. §1391.
- 6. The United States of America may be served with process in accordance with Rule 4(1) of the Federal Rules of Civil Procedure by serving a copy of the Summons and Complaint on Christopher Chiou, Acting United States Attorney, by certified mail, return receipt requested at his office:

U.S. Attorney's Offfice District of Nevada Attn: Civil Process Clerk 501 Las Vegas Boulevard South Las Vegas, NV 89101

7. Service is also affected by serving a copy of the Summons and Complaint on Merrick Garland, Attorney General of the United States, by certified mail, return receipt requested at:

The Attorney General's Office

U.S. Department of Justice

Attn: Civil Process Clerk

950 Pennsylvania Ave., N.W.

Washington, D.C. 20530-0001

CONDITIONS PRECEDENT

- 8. Plaintiff pleads pursuant to 28 U.S.C. §§2672 and 2675(a) that the claims set forth meet all jurisdictional prerequisites, including timely administrative presentment.

 Defendant made a final disposition of the claim on or around March 3, 2021.
- 9. Accordingly, pursuant to 28 U.S.C. §2675(a), Plaintiff has complied with all jurisdictional prerequisites and conditions before the commencement and prosecution of this suit.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

10. Plaintiff realleges and incorporates herein by reference Paragraphs 1-9 and all other facts and allegations of the Complaint, as though fully restated herein.

- 11.Decedent THEODORE L. SWENSON, as a U.S. veteran, had established care with the Mike O'Callaghan Federal Medical Center ("FMC") at Nellis Air Force Base before the events that are the subject of this litigation.
- 12.Decedent THEODORE L. SWENSON was born on February 3, 1945.
- 13.According to Decedent THEODORE L. SWENSON's medical records, he was seen at the FMC on July 27, 2018, for choledocholithiasis and had an ERCP (endoscopic retrograde cholangiopancreatography) performed with sphincterotomy and stent placement. He was discharged home with plans for an outpatient laparoscopic cholecystectomy (gallbladder removal) in the near future.
- 14.Decedent THEODORE L. SWENSON returned to the FMC on August 24, 2018, for an elective outpatient laparoscopic cholecystectomy. During this procedure, major injuries were inflicted upon Mr. Swenson's common bile duct and right hepatic artery. Plaintiff is informed and believes, and thereon alleges, that William Hogue Scott, Jr., D.O., was the surgeon who performed the attempted laparoscopic cholecystectomy upon Decedent THEODORE L. SWENSON on August 24, 2018.
- 15.The records from University Medical Center ("UMC") in Las Vegas indicate that Decedent THEODORE L. SWENSON's surgeon at the FMC claimed that once the laparoscopic cholecystectomy was initiated, the gallbladder was noted to be adherent to the liver and duodenum and that it was difficult to visualize Decedent THEODORE L. SWENSON's anatomy due to the presence of a cholecysto-duodenal fistula. An intraoperative cholangiogram was performed, which showed that Decedent THEODORE L. SWENSON's surgeon had cut Decedent THEODORE L. SWENSON's common bile duct instead of Decedent THEODORE L. SWENSON's cystic duct. At this point, the attempted laparoscopic cholecystectomy was aborted.

- 16. Shortly after that, Decedent THEODORE L. SWENSON was transferred to UMC for all further care. Subsequently, at UMC, it was determined that Decedent THEODORE L. SWENSON's right hepatic artery had been ligated (sutured) during the attempted laparoscopic cholecystectomy at the FMC on August 24, 2018.
- 17.At UMC, Decedent THEODORE L. SWENSON underwent several surgical procedures, including but not limited to a Roux-en-Y to address his badly injured biliary system. Unfortunately, Decedent THEODORE L. SWENSON died on October 16, 2018.
- 18.Rexene Worrell, M.D., the forensic pathologist who performed an autopsy upon Decedent THEODORE L. SWENSON, opined that Decedent THEODORE L. SWENSON's death was caused by the injuries he received during attempted laparoscopic cholecystectomy at the FMC on August 24, 2018, including but not limited to the inadvertent suturing of Decedent THEODORE L. SWENSON's right hepatic artery.

FIRST CLAIM FOR RELIEF

(Federal Tort Claims Act---Professional Negligence)

- 19.Plaintiff realleges and incorporates herein by reference Paragraphs 1-18 and all other facts and allegations of the Complaint, as though fully restated herein.
- 20.Defendant's employees and/or agents owed a duty to act in the same manner as ordinarily prudent physicians, resident physicians, fellow physicians, nurses, medical staff, nursing staff, technicians, technologists, and administrative staff, in the same or similar circumstance in caring for, diagnosing and treating Decedent THEODORE L. SWENSON.

- 21.Defendant held itself and its employees and agents out to Decedent THEODORE L. SWENSON as providers of health care with the requisite and competent medical personnel, nursing personnel, and staff to properly care for Decedent THEODORE L. SWENSON.
- 22.Defendant, by and through its physicians, resident physicians, fellow physicians, nurses, nursing staff, administrative staff, agents, and employees, owed Decedent THEODORE L. SWENSON a duty to provide reasonable and ordinary medical and nursing care and treatment to him in compliance with the standard of care required of similar healthcare providers. (See, Declaration of Brendan J. Carroll, M.D., F.A.C.S., attached hereto as Exhibit 1).
- 23. The conduct of the surgeon who performed the attempted laparoscopic cholecystectomy on Decedent THEODORE L. SWENSON at the FMC on August 24, 2018, Dr. Scott, fell below the standard of care and such breach in the standard of care, to a reasonable degree of medical probability, was a substantial contributing factor causing Decedent THEODORE L. SWENSON's injuries and ultimate death.
- 24. Specifically, Decedent THEODORE L. SWENSON's surgeon breached the standard of care by failing to properly identify the pertinent structures of Decedent THEODORE L. SWENSON's biliary system, which to a reasonable degree of medical probability resulted in the misidentification of Decedent THEODORE L. SWENSON's common bile duct and right hepatic artery, both of which were, respectively, inadvertently transected and ligated on August 24, 2018, causing serious injury to Decedent THEODORE L. SWENSON.
- 25.As a result of all of the breaches in the standard of care listed above, Decedent THEODORE L. SWENSON died on October 16, 2018.

1	26. As a direct and proximate result of the actions of the Defendants, and each of them,
2	as herein alleged, PLAINTIFF JENNIFER AIELLO has been forced to endure
3	great pain, suffering, emotional distress, loss of companionship, loss of society,
4	loss of guidance, loss of financial support, loss of probable support, loss of
5	earnings, lost pension income, lost household income, loss of love, loss of advice,
6	and loss of other services valued in excess of \$75,000.00.
7 8	27. It has become necessary for Plaintiff to retain the services of attorneys to prosecute this action, and Plaintiff is therefore entitled to attorneys' fees and costs
9	and costs of suit incurred herein.
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REQUEST FOR RELIEF

Plaintiff requests the Defendant be cited to appear and answer herein: that upon final trial and hearing, the Plaintiff have a judgment against the Defendant for the amount of actual damages; and for such other and different amounts as she shall show by proper amendment before trial; for post-judgment interest at the applicable legal rate; for all Court costs incurred in this litigation; and for such other and further relief, at law and in equity, both general and special, to which the Plaintiff may show herself entitled to and to which the Court finds them deserving.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in her favor and against Defendant and award Plaintiff the following:

- a. Actual damages in an amount in excess of \$75,000.00;
- b. Costs of suit;
- c. Pre-judgment and post-judgment interest, as provided by law;
- d. All other relief the Court deems appropriate

Respectfully submitted,

DATED: August 31, 2021 KARLIN & KARLIN, APLC /s/ Marc A. Karlin

By: _____

MARC A. KARLIN, ESQ. Attorneys for Plaintiff

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Exhibit 1

DECLARATION OF BRENDAN J. CARROLL, M.D., F.A.C.S.

In RE: THE MATTER OF THEODORE L. SWENSON, DECEASED

I, Brendan J. Carroll, M.D., F.A.C.S., declare as follows:

- 1. I am a physician licensed to practice in the State of California. I am board-certified in the specialty of surgery by the American Board of Surgery.
- 2. I hold a B.A. in chemistry with distinction from Cornell University. I hold an M.D. degree from Cornell University Medical College. I completed a residency in surgery at Cedars-Sinai Medical Center in Los Angeles. A copy of my current C.V. is attached hereto as Exhibit 1 which sets forth in detail my education, training, and experience.
- 3. I have been asked to review the materials referenced below and provided opinions based upon my specific knowledge, education, training, and experience with the medical care and conditions at issue in the above-referenced matter. All of my opinions expressed herein are to a reasonable degree of medical probability.
- 4. I practice or have practiced in the areas substantially similar to the types of practice engaged in at the time of the malpractice at issue here, notably, surgery upon the biliary system, which consists of the organs and ducts (bile ducts, gallbladder, and associated structures) that are involved in the production and transportation of bile.
- 5. I have been retained to review and comment upon the standard of care of the health care providers involved in the care of Theodore L. Swenson (DOB: February 3, 1945) from July 2018 until his death on October 16, 2018.
 - 6. I have reviewed the following records regarding the care of Mr. Swenson:
- A. Limited records from the Mike O'Callaghan Federal Medical Center at Nellis Air Force Base ("FMC"). Notably missing from the records produced to date by the FMC is the operative report from the attempted laparoscopic cholecystectomy performed upon Mr. Swenson on August 24, 2018. I am informed and believe, and thereon allege, that both Plaintiff and her counsel have requested that the FMC provide a complete copy of Mr. Swenson's records, but that the FMC, to date, has not complied with these requests. I am further informed and believe and thereon allege, that the attempted laparoscopic cholecystectomy at the FMC on August 24, 2018, was performed by William Hogue Scott, Jr., D.O.
 - B. Mr. Swenson's records from University Medical Center ("UMC");
- C. The autopsy report of Rexene Worrell, M.D., regarding the autopsy performed upon Mr. Swenson by Dr. Worrell.

- 7. According to Mr. Swenson's medical records, he was seen at the FMC on July 27, 2018, for choledocholithiasis and had an ERCP (endoscopic retrograde cholangiopancreatography) performed with sphincterotomy and stent placement, and was discharged home with plans for an outpatient laparoscopic cholecystectomy in the near future.
- 8. Mr. Swenson returned to the FMC on August 24, 2018, for an elective outpatient laparoscopic cholecystectomy. During this procedure, major injuries were inflicted upon Mr. Swenson's common bile duct and right hepatic artery.
- 9. The records from UMC indicate that Mr. Swenson's surgeon at the FMC claimed that once the laparoscopic cholecystectomy was initiated, the gallbladder was noted to be adherent to the liver and duodenum and that it was difficult to visualize Mr. Swenson's anatomy due to the presence of a cholecysto-duodenal fistula. An intraoperative cholangiogram was performed, which showed that Mr. Swenson's surgeon had cut Mr. Swenson's common bile duct instead of Mr. Swenson's cystic duct. At this point, the attempted laparoscopic cholecystectomy was aborted.
- 10. Shortly thereafter, Mr. Swenson was transferred to UMC for all further care. Subsequently, at UMC, it was determined that Mr. Swenson's right hepatic artery had been ligated (sutured) during the attempted laparoscopic cholecystectomy at the FMC.
- 11. At UMC, Mr. Swenson underwent several surgical procedures, including but not limited to a Roux-en-Y to address his badly injured biliary system. Unfortunately, Mr. Swenson died on October 16, 2018. Dr. Worrell, the forensic pathologist who performed an autopsy upon Mr. Swenson, opined that Mr. Swenson's death was caused by the injuries he received during attempted laparoscopic cholecystectomy at the FMC on August 24, 2018, including but not limited to the inadvertent suturing of Mr. Swenson's right hepatic artery.
- 12. Based upon my review of the records currently available to me, my training, experience, and expertise, as well as my familiarity with the standard of care for physicians, including surgeons, practicing in the same or similar circumstances as those in this case, it is my opinion that the conduct of the surgeon who performed the attempted laparoscopic cholecystectomy on Mr. Swenson at the FMC on August 24, 2018, fell below the standard of care and such breach in the standard of care, to a reasonable degree of medical probability, was a substantial contributing factor causing Mr. Swenson's injuries and ultimate death. Specifically, Mr. Swenson's surgeon breached the standard of care by failing to properly identify the pertinent structures of Mr. Swenson's biliary system which to a reasonable degree of medical probability resulted in the misidentification of Mr. Swenson's common bile duct and right hepatic artery, both of which were, respectively, inadvertently transected and ligated on August 24, 2018, causing serious injury to Mr. Swenson.
- 12. Notably, according to the records from UMC, the surgeon who performed the attempted laparoscopic cholecystectomy on Mr. Swenson at the FMC on August 24, 2018, claimed he encountered severe anatomic distortion caused by cholecysto-duodenal fistula. However, the ERCP of July 27, 2018, does not reference the presence of such a fistula.

13. The factual assessments and medical opinions expressed herein are based on the medical records currently available to me. I reserve the right to modify my assessments and medical opinions as additional medical records and information become available, including but not limited to the operative report regarding the attempted laparoscopic cholecystectomy of August 24, 2018, performed at the FMC.

I declare under the penalty of perjury according to the laws of the State of Nevada and the United States of America that the foregoing is true and correct.

Executed this Zday of August 2021, at Beverly Hills, CA.

Brendan J. Carroll, M.D., R.A.C.S.

Exhibit 1 to Ex. 1

CURRICULUM VITAE February 2021

BRENDAN J. CARROLL, M.D., F.A.C.S.

BUSINESS NAME:

Brendan J. Carroll, M.D., Inc.

TAX I.D.:

62-1846576

NPI #:

139759981

ADDRESS:

9001 Wilshire Boulevard

Suite 304

Beverly Hills, California 90211

TELEPHONE:

(310) 854-0151

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(310) 855-1024

CITIZENSHIP:

United States of America

UNDERGRADUATE EDUCATION:

1974 - 1978

Cornell University. Ithaca, New York. B.A. Chemistry with Distinction in All Subjects.

MEDICAL SCHOOL:

1978 - 1982

Cornell University Medical College.

New York, New York.

RESIDENCY:

1982 - 1987

General Surgery. Cedars-Sinai Medical

Center, Los Angeles, California.

BOARD CERTIFICATION:

1988,1998,2008,2018,

2020

American Board of Surgery.

PAGE 2

SOCIETY MEMBERSHIPS:

Fellow, American College of Surgeons

CALIFORNIA LICENSE:

License#: G51142

HONORS AND AWARDS:

1984 - 1985

Leo G. Rigler Award, Outstanding House Officer.

PRESENTATIONS:

Common bile duct exploration. SAGES annual meeting: Post graduate course. San Diego, California; March 1997.

Laparoscopic common duct techniques. Ethicon-Endosurgery Corporation. Cincinnati, Ohio; November 1993.

Advanced laparoscopy. UCLA medical Center, Los Angeles, California; February 1992.

Laparoscopic common duct exploration. International Multispecialty Congress of Endosurgery, Maui, Hawaii; October 1991.

Advanced Laparoscopic techniques. Advanced Endoscopic Surgical Technologies post-graduate course, Palm Springs, California; September 1991.

Laparoscopic cholecystectomy. Society of Graduate Surgeons - Universities of Southern California, Surgical Forum, Los Angeles, California; March 1991.

Laparoscopic cholecystectomy and advanced laparoscopic surgeries. Indonesian Society of Digestive Diseases - R.S. Cipto, Mangunkusumo, R.S. Pondok Indah, R.S. Husada Hospitals in Jakarta, Indonesia; March 1991.

PAGE 3

Laser Laparoscopic cholecystectomy. Institute for the Advancement of Laser Surgery, New Jersey Medical College, Newark, New Jersey; August 1990.

PUBLICATIONS:

Carroll, Brendan Letter to Editor "Iatrogenic Bile Duct Injuries" JACS Volume 224 #3
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Carroll BJ, Phillips EH. Laparoscopic transcystic duct common bile duct exploration. In: Problems in General Surgery. Publ: Lippincott-Raven. Ed: Phillips E and Soper N., Vol. 12(3);47-53, 1996.

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Liberman M, Phillips EH, Carroll BJ, et al. Management of choledocholithiasis during pregnancy: A new protocol in the laparoscopic era. J Laparoendo Surg 5(6);399-403, 1995.

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INVITED PRESENTATIONS

"Superiority of laparoscopic cholecystectomy staging of Hodgkin's disease." Western Surgical Assoc. Annual meeting, Colorado Springs, Colorado; November, 1997.

"Common bile duct injuries and litigation." SAGES Annual Meeting. San Diego, California; March 1997.

Complications of laparoscopic splenectomy." European Assoc. Endo Surgeons. Luxembourg; June 1995.

"One hundred consecutive laparoscopic cholangiograms." SAGES Annual Meeting. Orlando, Florida; March 1994.

PAGE 7

"Laparoscopic treatment of CBD stones in pregnancy" (scientific poster). American College of Surgeons, Southern California Chapter. Indian Wells, California; January 1995.

Laparoscopic bile duct surgery." International Endosurgery Conference. Christchurch, New Zealand; October 1994.

"Advanced Laparoscopy." 10th International Congress. Instituto Technologico y de estudios superiores de Monterrey; Monterrey, Mexico; April 1994.

"Lararoscopic splenectomy." Naval Medical Center, San Diego, California; March 1994.

"Stapled mesh herniorrhaphy" (scientific poster). American College of Surgeons. San Francisco; November 1993.

"Laparoscopic cholecystectomy." University of Southern California in collaboration with Century City Hospital. Los Angeles, California; September 1993.

"Laparoscopic colon resection." American College of Surgeons. L'Aquila, Italy; June 1993.

"Staples mesh herniorrhaphy." Hernia '93, International symposium, Indianapolis, Indiana; May 1993.

"Laparoscopic transcystic choledochoscopy." SAGES Annual Scientific Session. Phoenix, Arizona; April 1993.

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"Laparoscopic treatment of common duct stones." American College of Surgeons Annual Meeting. New Orleans, Louisiana; October 1992.

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"Laparoscopic colon resection." Seattle Symposium on Laparoscopic Colon Surgery. Seattle, Washington; May 1992.

PAGE 8

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"Laparoscopic cholecystectomy and common duct exploration." American College of Surgeons, Southern California Chapter Annual Meeting. Indian Wells, California, January 1992.

"Management of common duct stone encountered during laparoscopic cholecystectomy." American Society of Gastroenterologists, Digestive Disease Week. New Orleans, Louisiana, May 1991.

"Laparoscopic cholecystectomy and common duct exploration: Results from 453 consecutive cases." American gastroenterology Association, Digestive Disease Week. New Orleans, Louisiana; May 1991.

"Laparoscopic cholecystectomy and common duct exploration." Arizona Surgical Symposium. Scottsdale, Arizona; January 1991.

"Laparoscopic cholecystectomy." Biomedical Optics Conference, Los Angeles, California; January 1991.

"The importance of laparoscopic cholangiography during endoscopic cholecystectomy." Southern California Chapter of the American College of Surgeons; January 1990.

"Thrombocytosis as a consequence of splenic injury and repair, as well as splenectomy." Southern California Chapter of the American College of Surgeons; January 1988.

"Alternative method of repair of massive ventral hernias." Southern California Chapter of the American College of Surgeons; January 1987.

"Retroperitoneal vascular injuries." Southern California Chapter of the American College of Surgeons; Jan 1986.

EDUCATIONAL FILMS

PAGE 9

"Laparoscopic common duct exploration and ulcer repair." October 1994.

"Stapled mesh herniorrhaphy." Copyright Brendan J. Carroll, M.D., F.A.C.S.; April 1994.

"Laparoscopic splenectomy." Copyright Brendan J. Carroll, M.D., F.A.C.S.; January 1992. American College of surgeons Film Library.

"Laparoscopic common bile duct exploration." Copyright Brendan J. Carroll, M.D., F.A.C.S.; April 1991.

February 23, 2021